

THERESA CLAASSEN, Secretary-Treasurer

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2 of the State of California  
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8 Attorneys for Complainant

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BEFORE THE  
BOARD OF MEDICAL QUALITY ASSURANCE  
DIVISION OF MEDICAL QUALITY  
STATE OF CALIFORNIA

In the Matter of the Accusation )  
Against: ) No. D-3587  
THUC-OANH THI VU, M.D. ) STIPULATION AND WAIVER  
560 E. St. John Street )  
San Jose, CA 95112 )  
Physician and Surgeon )  
Certificate No. A-036564 )  
Respondent. )

IT IS HEREBY STIPULATED BY AND BETWEEN THUC-OANH THI  
VU, M.D., (hereinafter "respondent") with the advice and consent  
of her attorney, Guyton N. Jinkerson, Esq., and the Division of  
Medical Quality, Board of Medical Quality Assurance (hereinafter  
"Division") by and through its attorney Frank H. Pacoe, Deputy  
Attorney General, as follows:

1. Accusation No. D-3587 is presently pending before  
the Division. 1/

1. A copy of said Accusation is attached as Exhibit A.

1.

1           2. Respondent is represented by Guyton N. Jinkerson,  
2 Attorney at Law, in this matter.

3           3. Respondent has carefully read and reviewed this  
4 stipulation in English and understands the entire contents of  
5 this document.

6           4. Respondent and her attorney have fully discussed  
7 the charges and allegations in Accusation No. D-3587 and  
8 respondent has been fully advised by her attorney of her rights  
9 concerning this Accusation.

10          5. Respondent is fully aware of and understands her  
11 right to a hearing on the charges and allegations in Accusation  
12 No. D-3587; her right to reconsideration, to appeal, and any and  
13 all other rights which may be afforded her under the California  
14 Administrative Procedure Act and the laws of the State of  
15 California as they relate to Accusation No. D-3587.

16          6. Respondent hereby fully and voluntarily waives her  
17 right to a hearing, to reconsideration, to appeal, and any and  
18 all other rights afforded her under the California Administrative  
19 Procedure Act and the laws of the State of California as they  
20 relate to Accusation No. D-3587 except for those statutory  
21 rights pertaining to modification or termination of probation.

22          7. Respondent admits the charges and allegations  
23 contained in paragraph 10 of Accusation No. D-3587, and admits  
24 that grounds for discipline are stated under Business and  
25 Professions Code section 2236 in conjunction with sections 2227  
26 and 2234.

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1           8. Based on the foregoing admissions, it is further  
2 stipulated and agreed by the parties hereto that the Division may  
3 issue the following decision:

4           Certificate No. A036564 issued to the respondent  
5 Thuc-Oahn Thi Vu is revoked. However, revocation is  
6 stayed and respondent is placed on probation for five  
7 years upon the following terms and conditions:

8           (1) Certificate No. A036564 issued to respondent  
9 Thuc-Oanh Thi Vu is suspended for three months. This period of  
10 suspension shall be reduced by any comparable period of time  
11 served in compliance with the sentencing which was imposed upon  
12 respondent's conviction in the Superior Court of Santa Clara in  
13 case No. 94951.

14           (2) Within 90 days of the effective date of this  
15 decision, and on an annual basis thereafter, respondent shall  
16 submit to the Division for its prior approval an educational  
17 program or course related to general medicine which shall not be  
18 less than 40 hours per year, for each year of probation. This  
19 program shall be in addition to the Continuing Medical Education  
20 requirements for re-licensure. Following the completion of each  
21 course, the Division or its designee may administer an  
22 examination to test respondent's knowledge of the course.  
23 Respondent shall provide proof of attendance for continuing  
24 medical education of which 40 hours were in satisfaction of this  
25 condition and were approved in advance by the Division.

26           (3) Within 60 days of the effective date of this  
27 decision, respondent shall submit to the Division for its prior

1 approval a community service program in which respondent shall  
2 provide free medical services on a regular basis to a community  
3 or charitable facility or agency for at least 16 hours a month  
4 for the first 36 months of probation. Community service, if any,  
5 ordered by the Superior Court of the County of Santa Clara in  
6 Case No. 94951 shall not be included in the service obligation  
7 provided for herein.

8 (4) Within 60 days of the effective date of this  
9 decision, respondent shall take and pass an oral clinical  
10 examination in general medicine to be administered by the  
11 Division or its designee. If respondent fails this examination,  
12 respondent must take and pass a re-examination consisting of a  
13 written as well as an oral clinical examination. The waiting  
14 period between repeat examinations shall be at three month  
15 intervals until success is achieved. The Division shall pay the  
16 cost of the first examination and respondent shall pay the cost  
17 of any subsequent re-examinations.

18 If respondent fails the first examination, respondent  
19 shall cease the practice of medicine until the re-examination has  
20 been successfully passed, as evidenced by written notice to  
21 respondent from the Division.

22 (5) Within 30 days of the effective date of this  
23 decision, respondent shall submit to the Division, and receive  
24 its prior approval, for a plan of practice in which respondent's  
25 patient records and billings will be reviewed on a monthly basis  
26 by a peer physician, or independent bookkeeper familiar with  
27 physician billing procedures, or independent accountant familiar

1 with physician billing procedures, who shall submit monthly  
2 reports to the Regional Medical Consultant. The purpose of this  
3 review will be to determine if the respondent accurately billed  
4 for the services rendered. The cost of said review will be borne  
5 by respondent. Respondent may maintain a solo practice under the  
6 plan of practice.

7 (6) Respondent shall obey all federal, state and local  
8 laws, and all rules governing the practice of medicine in  
9 California.

10 (7) Respondent shall submit quarterly declarations  
11 under penalty of perjury on forms provided by the Division,  
12 stating whether there has been compliance with all the conditions  
13 of probation.

14 (8) Respondent shall comply with the Division's  
15 probation surveillance program.

16 (9) Respondent shall appear in person for interviews  
17 with the Division's medical consultant upon request at various  
18 intervals and with reasonable notice.

19 (10) In the event respondent should leave California  
20 to reside or to practice outside the State, respondent must  
21 notify the Division in writing of the dates of departure and  
22 return. Periods of residency or practice outside California will  
23 not apply to the reduction of this probationary period.

24 (11) Upon successful completion of probation,  
25 respondent's certificate will be fully restored.

26 (12) If respondent violates probation in any respect,  
27 the Division, after giving respondent notice and the opportunity

1 to be heard, may revoke probation and carry out the disciplinary  
2 order that was stayed. If an accusation or petition to revoke  
3 probation is filed against respondent during probation, the  
4 Division shall have continuing jurisdiction until the matter is  
5 final, and the period of probation shall be extended until the  
6 matter is final.

7 9. The parties hereto agree that the terms and  
8 conditions set forth herein shall be null and void and not  
9 binding upon them unless approved and adopted by the Division.  
10

11 DATED: May 11, 88

Thuc-Oanh Thi Vu  
THUC-OANH THI VU, M.D.  
Respondent

13  
14 DATED: May 16, 1988

Guyton N. Jinkerson  
GUYTON N. JINKERSON, Esq.  
Attorney for Respondent

15  
16  
17 DATED: June 7, 1988

Frank H. Pacoe  
FRANK H. PACOE  
Deputy Attorney General  
Attorney for Complainant

1 JOHN K. VAN DE KAMP, Attorney General  
2 of the State of California  
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BEFORE THE BOARD OF MEDICAL QUALITY ASSURANCE  
DIVISION OF MEDICAL QUALITY  
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In the Matter of the Accusation ) No. D-3587  
Against: )

THUC-OANH THI VU, M.D. ) ACCUSATION  
560 E. St. John Street )  
San Jose, CA 95112 )  
Physician and Surgeon )  
Certificate No. A-036564, )  
Respondent. )

Complainant Kenneth J. Wagstaff alleges:

1. Complainant Kenneth J. Wagstaff is the Executive Director of the Board of Medical Quality Assurance (hereinafter referred to as the "Board") and makes and files this Accusation in his official capacity and not otherwise.

2. On or about April 13, 1981, the Board issued Physician and Surgeon Certificate Number A-306564 to Thuc-Oanh Thi Vu, M.D. (hereinafter referred to as the "respondent"). That certificate has continued in full force and effect at all times pertinent hereto.

3. Business and Professions Code sections 2227 and 2234 provide, in pertinent part, that the Division of Medical

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**EXHIBIT A**



1 Quality of the Board shall take disciplinary action against any  
2 licensee who is found guilty of unprofessional conduct.

3 4. Business and Professions Code section 2234(e)  
4 specifically provides that the commission of any act involving  
5 dishonesty or corruption which is substantially related to the  
6 qualifications functions or duties of a physician and surgeon  
7 constitutes unprofessional conduct.

8 5. Business and Professions Code section 2261 provides  
9 that knowingly making or signing any certificate or other  
10 document directly or indirectly related to the practice of  
11 medicine which falsely represents the existence or non-existence  
12 of a state of facts constitutes unprofessional conduct.

13 6. Business and Professions Code section 2236 provides  
14 that the conviction of any offense substantially related to the  
15 qualifications, functions, or duties of a physician and surgeon  
16 constitutes unprofessional conduct.

17 7. At all times relevant respondent was a provider of  
18 services under the California Medical Assistance Program  
19 (hereinafter referred to as "Medi-Cal Program") and was thereby  
20 eligible to be reimbursed for services by the State of  
21 California, through its fiscal intermediary, pursuant to Welfare  
22 and Institutions Code section 14000, et seq. The aforementioned  
23 Medi-Cal Program is administered by the Department of Health  
24 Services. Respondent was assigned Medi-Cal Provider Number  
25 00A36540.

26 8. Welfare and Institutions Code section 14107  
27 provides that any person who, with intent to defraud, presents

1 for allowance or payment by the Medi-Cal Program any false or  
2 fraudulent claim for furnishing services or merchandise,  
3 knowingly submits false information for the purpose of obtaining  
4 greater compensation than that to which he is legally entitled  
5 for furnishing services or merchandise, or knowingly submits  
6 false information for the purpose of obtaining authorization for  
7 furnishing services or merchandise under this chapter is  
8 punishable by imprisonment in the county jail not longer than one  
9 year or in the state prison not exceeding five years, or by fine  
10 not exceeding five thousand dollar (\$5,000), or by both such fine  
11 and imprisonment.

12           The enforcement remedies provided under this section  
13 are not exclusive and shall not preclude the use of any other  
14 criminal or civil remedy.

15           9. Respondent has been guilty of unprofessional  
16 conduct pursuant to Business and Professions Code sections  
17 2234(e) and or 2261, thereby providing grounds for disciplinary  
18 action under sections 2227 and 2234 of said Code in that during  
19 the year 1983, respondent submitted false claims to the Medi-Cal  
20 program, through its fiscal intermediary, representing that on  
21 certain dates she had performed physical examinations and tests  
22 of patients which she in fact did not perform, as is more  
23 particularly set forth below:

24           Count 1: On or about June 17, 1983, a special  
25 operator of the California Department of Justice Medi-  
26 Cal Fraud Unit went alone to respondent's medical  
27 office.

1 Respondent billed the Medi-Cal Program for  
2 services allegedly rendered to the special operator  
3 (Medi-Cal Beneficiary Number 30300564120060) and for  
4 services rendered to four other persons (Medi-Cal  
5 Beneficiary Numbers 30300564120050, 30300564120002,  
6 30300564120001, and 3030056088050) when in truth and  
7 fact no such services were rendered to said patients.

8 Count 2: On or about July 26, 1983, a special  
9 operator of the California Department of Justice Medi-  
10 Cal Fraud Unit went to respondent's medical office.

11 Respondent billed the Medi-Cal Program for  
12 services allegedly rendered to the special operator  
13 (Medi-Cal Beneficiary Number 43300750135001) when in  
14 truth and fact no such services were rendered to said  
15 patient.

16 Count 3: On or about September 12, 1983, a  
17 special operator of the California Department of  
18 Justice Medi-Cal Fraud Unit went to respondent's  
19 Medical Office.

20 Respondent billed the Medi-Cal Program for  
21 services allegedly rendered to the special operator  
22 (Medi-Cal Beneficiary Number 30300564111060) when in  
23 truth and fact no such services were rendered to said  
24 patient.

25 10. Respondent has been guilty of unprofessional  
26 conduct pursuant to Business and Professions Code section 2236,  
27 thereby providing grounds for disciplinary action under sections

1 2227 and 2234 of said Code in that respondent was convicted of  
2 offenses substantially related to the qualifications, functions,  
3 or duties of a physician and surgeon, as is more particularly set  
4 forth as follows:

5 On or about June 19, 1985, respondent was  
6 convicted by a jury in the Superior Court, County of  
7 Santa Clara, Case No. 94951, on seven counts of  
8 violation of Welfare and Institutions Code section  
9 14107 (presenting false claims). Pursuant to said  
10 conviction, respondent was sentenced to County Jail for  
11 one year, five years probation, ordered to pay a fine  
12 in the amount of \$10,000.00, a penalty in the amount of  
13 \$3,500.00, restitution in an undetermined amount to the  
14 Medi-Cal Program, and ordered to perform community  
15 service work. The circumstances of the aforementioned  
16 offenses involved respondent's submission of false and  
17 fraudulent claims to the Medi-Cal Program and the  
18 acceptance of payment therefore.

19 11. The aforementioned offenses were substantially  
20 related to the qualifications, functions, and duties of a  
21 physician and surgeon in that they evidence unfitness to perform  
22 the functions authorized by a physician's and surgeon's  
23 certificate in a manner consistent with the public health, safety  
24 and welfare.

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WHEREFORE, complainant prays that a hearing be held and that respondent's license be suspended or revoked or such other action taken as the Board deems proper.

Dated: December 8, 1986

KENNETH J. WAGSTAFF  
Executive Director  
Board of Medical Quality Assurance  
Complainant